

6 August 1976

MEMORANDUM FOR: Executive Secretary, Security Committee

FROM : Anthony A. Lapham  
General Counsel

SUBJECT : Proposed DCID No. 1/19 "Nondisclosure Agreement  
for Intelligence Sources and Methods Information"

REFERENCE : SECOM-D-170 dated 26 July 1976, same subject

1. In referent you requested the comments of this office regarding the latest version (attached to referent) of the subject. First, I will reiterate our position regarding classified sources and methods. Clearly some, if not a great number, of intelligence sources and methods may qualify for classification. The important point here, however, is that the responsibility of the Director of Central Intelligence is not limited to protect only those sources and methods which are classified. The statute simply states "that the Director of Central Intelligence shall be responsible for protecting intelligence sources and methods from unauthorized disclosure." Simply stated there is no justification for administratively limiting this statutory responsibility to only those sources and methods which are classified. Further, Section 7(a) of Executive Order 11905, as now promulgated, also contains no such limitation. It plainly requires "all members of the Executive branch and its contractors given access to information containing sources and methods of intelligence" to "as a condition of obtaining access, sign an agreement that they will not disclose that information to persons not authorized to receive it." The Executive Order is now in force. The agreement required thereunder of all those given access to intelligence sources and methods must cover all intelligence sources and methods and, thus, should not be limited to only classified sources and methods.

2. As expressed in footnote 2 of the proposed DCID, I agree that a definition for intelligence sources and methods is not a desirable part of the DCID, particularly for the reason that it may be found to conflict with the Aspects of Intelligence Sources and Methods which the Director of Central Intelligence adopted on 12 January 1976.

3. As to the Warning Notice for materials containing intelligence sources and methods, it is my position that the word SENSITIVE should be deleted. Our reason for this is that we are fearful that a court might require a higher level of proof than is otherwise required pursuant to 50 U.S.C. 403(d)(3). A court could require not only a showing that

the contested information qualifies as an intelligence source and method, but also that it is a sensitive intelligence source and method. As you can imagine, the possibility of adding to our burden of proof should not be our objective and if we can anticipate chances of avoiding such we should clearly follow up on such possibilities.

4. I understand that there may be worry in some quarters that if SENSITIVE is deleted from the Warning Notice two different notices will be required for these documents that contain both classified and sources and methods information; one notice pursuant to the NSC implementing directive associated with Executive Order 11652, and this one associated with DCID 1/19. As you know the NSSM 229 group is considering changes to Executive Order 11652 and the implementing directive related thereto. We have discussed the matter of changing the notice required by that Executive Order with Ms. Jeanne Davis who is in charge of the NSSM 229 group. After we explained our thoughts as outlined above, she reasoned that there was good basis to remove SENSITIVE from the current Warning Notice and will undertake to propose such to that group. If such is accepted, then there will be no requirement for two different Warning Notices.

5. For the same reasons as expressed in paragraph 1 above, I find no basis for making any exemptions as contained in paragraph 5 of the proposed DCID (for communications intelligence or any other sensitive compartmented information).



Anthony A. Lapham

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DIRECTOR OF CENTRAL INTELLIGENCE

Security Committee

SECOM-D-170

26 July 1976

MEMORANDUM FOR:

[Redacted]

Associate General Counsel

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FROM

: [Redacted]

Executive Secretary

STAT

SUBJECT

: DCID No. 1/19, "Nondisclosure Agreements for Intelligence Sources or Methods Information"

1. Reference is made to our telephone conversation this morning concerning your reviewing the proposed draft DCID 1/19, attached. Your opinion as to its legality and conformance with Executive Order 11905 requirements would be appreciated prior to its submission to the DCI and NFIB.

2. The draft contains various suggested positions from the members of the Security Committee with explanatory footnotes. The applicability of this DCID to all sources and methods or classified sources and methods is still in contention. Although not reflected in the DCID because NSA's written position has not yet been received, they seem to be having problems with the Warning Notice and feel that SENSITIVE should be deleted.

3. Your comments will be most helpful in finalizing the position to be recommended to the DCI. Hopefully, they will be prepared by 6 August 1976 as we discussed.

[Redacted]

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Attachment

Draft DCID 1/19

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